



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2018-0593; FRL-9992-97-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation Number 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve State Implementation Plan (SIP) revisions submitted by the State of Colorado on February 25, 2015, and May 24, 2017. These SIP revisions are necessary for Colorado to address current federal prevention of significant deterioration (PSD) and nonattainment new source review (NSR) regulations. In this rulemaking, we are taking final action on all portions of the February 25, 2015, and May 24, 2017 submittals, except for those portions of the submittal which have been previously acted on or do not belong in the SIP. The intended effect of this action is to bring Colorado's PSD and nonattainment NSR permitting programs in line with federal requirements. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This final rule is effective on **[Insert date 30 days from the date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2018-0593. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g.,

confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, EPA, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6227, leone.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The EPA is taking final action to approve all revisions as submitted by the State of Colorado on February 25, 2015, and May 24, 2017, with the exception of the revisions that we have previously acted on or proposed to not act on, as outlined in section I. of our proposed rulemaking published on February 28, 2019 (84 FR 6732). On October 12, 2017 (82 FR 47380), we approved the following provisions that were part of the February 25, 2015 submittal: (1) Colorado’s revisions to fine particulate matter (PM_{2.5}), significant impact levels (SILs) and significant monitoring concentration (SMC) provisions; (2) Revisions to Colorado’s air pollution emission notices; and (3) Revisions to public notice requirements.

This final action approves the remaining revisions in the February 25, 2015 submittal that include revisions to the State’s PSD program in Regulation Number 3, the definitions of carbon dioxide equivalent (CO₂e) and regulated NSR pollutant, and the addition of plantwide

applicability limit (PAL) provisions for greenhouse gases (GHGs). On March 24, 2017, the State submitted two sets of SIP revisions to Regulation Number 3: the first pertaining to regulatory changes necessary in response to the June 23, 2014 U.S. Supreme Court decision in *Utility Air Regulatory Group v. EPA*; and the second addresses nonattainment NSR applicability in (among other things) ozone nonattainment areas that have been classified or reclassified as serious, severe or extreme. We proposed to approve those revisions in the February 28, 2019 rulemaking and are now taking final action to approve them.

We provided a detailed explanation of the bases for our proposed approval in our February 28, 2019 rulemaking, which will not be restated here. See 84 FR 6732. We invited comment on all aspects of our proposal and provided a 30-day comment period. The comment period ended on April 1, 2019.

II. Response to Comments

We received no comments during the public comment period.

III. Final Action

As outlined in our proposed rulemaking, the EPA is taking final action to approve the addition of new and revised rules to Regulation 3 that were submitted by Colorado on February 25, 2015, and May 24, 2017.

Specifically, we are taking final action to approve the following revisions: **Regulation Number 3, Part A: I. (Applicability)** - *I.B.10., I.B.23., I.B.25.c., I.B.28., I.B.28e., I.B.43., I.B.44.b., I.B.44.c., I.B.44.e.*; **V. (Certification And Trading Of Emission Reduction Credits Offset And Netting Transactions)** - *V.C.6., V.C.7., V.C.8., V.C.12., V.I.1*; **VI. (Fees)** – *VI.C.1.c, VI.C.1.*; **Regulation Number 3, Part D: I. (Applicability)** – *I.A.2., I.A.3.; I.B.1., I.B.2., I.B.3., I.C.*; **II.**

(Definitions) – II.A.1.d., II.A.2., II.A.4., II.A.4.e., II.A.4.f., II.A.5.c., II.A.13.a., II.A.13.a.(i) – (ii), II.A.13.b., II.A.13.b.(i)-(ii), II.A.16. – 22., II.A.22.a. – c., II.A.23. – 31. II.A.32. – 35., II.A.36. – 39., II.A.40.a. – c., II.A.40.d., II.A.40.e. – g., II.A.41. – 45., II.A.46., II.A.46.a. – b., II.A.47., II.A.47.a. – b., II.A.48.; V. (Requirements Applicable to Nonattainment Areas) - V.A.3.c., V.A.7.c., V.A.7.c.(i)(C), V.A.7.c.(v); VI. (Requirements applicable to attainment and unclassifiable areas and pollutants implemented under Section 110 of the Federal Act (Prevention of Significant Deterioration Program)) - VI.A.6., VI.B.5., VI.B.5.a.(iii), VI.B.5.e.; XV (Actual PALs) - XV.A.1., XV.A.2., XV.A.2.c. – d., XV.A.3., XV.B., XV.B.1., XV.B.4., XV.C.1., XV.C.1.a., XV.C.1.d., XV.C.1.g, XV.D., XV.E.1., XV.E.6., XV.E.6.a. – c., XV.F.1., XV.F.3., XV.F.5., XV.F.6., XV.F.7., XV.F.11, XV.G.2.b., XV.H.1.a., XV.H.4., XV.H.5., XV.I.1., XV.I.2., XV.I.4.c.(i) – (ii). XV.J.1., XV.J.1.a. – b., XV.K.1.a, XV.N.1.b, XV.N.1.d., and XV.N.2.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the State of Colorado’s revisions to its State Implementation Plan as described in section III. of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 8 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference in the next update to

the SIP compilation.¹

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

¹ 62 FR 27968 (May 22, 1997).

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60

days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Dated: April 29, 2019.

Debra Thomas,
Acting Regional Administrator,
Region 8.

40 CFR part 52 is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G – Colorado

2. In § 52.320, the table in paragraph (c) is amended:

- a. Under the center heading “5 CCR 1001-05, Regulation Number 3, Part A, Concerning General Provisions Applicable to Reporting and Permitting” by revising entries I, V, and VI; and
- b. Under the center heading “5 CCR 1001-05, Regulation Number 3, Part D, Concerning

Major Stationary Source New Source Review and Prevention of Significant

Deterioration” by revising entries I, II, V, VI, and XV.

The revisions read as follows:

§ 52.320 Identification of plan.

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(c) * * *

Title	State effective date	EPA Effective date	Final rule citation/date	Comments
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5 CCR 1001-05, Regulation Number 3, Part A, Concerning General Provisions Applicable to Reporting and Permitting				
I. Applicability	10/15/2014 3/16/2016	[Insert date 30 days after date of publication in the Federal Register].	[Insert Federal Register citation]. [Insert date of publication in the Federal Register].	
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V. Certification and Trading of Emission Reduction Credits Offset and Netting Transactions	10/15/2014	[Insert date 30 days after date of publication in the Federal Register].	[Insert Federal Register citation]. [Insert date of publication in the Federal Register].	
VI. Fees	10/15/2014	[Insert date 30 days after date of publication in the Federal Register].	[Insert Federal Register citation]. [Insert date of publication in the Federal Register].	
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5 CCR 1001-05, Regulation Number 3, Part D, Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration				
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I. Applicability	10/15/2014	[Insert date 30 days after date of publication in the Federal Register].	[Insert Federal Register citation]. [Insert date of publication in the Federal Register].	
II. Definitions	10/15/2014 3/16/2016	[Insert date 30 days after date of publication in the Federal Register].	[Insert Federal Register citation]. [Insert date of publication in the Federal Register].	
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V. Requirements Applicable to Nonattainment Areas	10/15/2014	[Insert date 30 days after date of publication in the Federal Register].	[Insert Federal Register citation]. [Insert date of publication in the Federal Register].	
VI. Requirements applicable to attainment and unclassifiable areas and pollutants implemented under Section 110 of the Federal Act (Prevention of Significant Deterioration Program)	10/15/2014	[Insert date 30 days after date of publication in the Federal Register].	[Insert Federal Register citation]. [Insert date of publication in the Federal Register].	
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XV. Actual PALs	10/15/2014	[Insert date 30 days after date of publication in the Federal Register].	[Insert Federal Register citation]. [Insert date of publication in the Federal Register].	
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